

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY**

WRIT PETITION NO.15176 OF 2006

Between:

K.Kondaiah Naidu and others

. . .Petitioners

AND

The Election Commission of India,
New Delhi and others

. . .Respondents

Counsel for the petitioners : Shri T.Rajendra Prasad

Dated: 24th July, 2006

: ORDER :

PER G.S.SINGHVI, CJ

In this petition filed in the name of public interest litigation, the petitioners have prayed for issue of a writ of mandamus or an order or direction in the nature of mandamus to the Election Commission of India (respondent No.1) to conduct an enquiry into the irregularities committed in preparation of electoral rolls of the Assembly Constituencies and Panchayats in the entire State of Andhra Pradesh including Thimmasamudram Village, Hamlet of Kesavaram Gram Panchayat, Jaldanki Mandal, Nellore District and take appropriate action against the person, who committed irregularities by prosecuting them under Section 32 of Representation of People Act, 1950 (for short 'the 1950 Act') and Indian Penal Code. The other prayer made in the writ petition is to declare the action of the respondents to delete the names of several persons from the electoral rolls of Village Thimmasamudram as illegal, arbitrary and unconstitutional and consequently, direct the respondents to take steps to continue the names of persons, who are eligible to be included in the electoral rolls of Thimmasamudram Village, Hamlet of Kesavaram Gram Panchayat and allow them to cast vote. Still further, the petitioners have prayed for directing the respondents to delete the names of ineligible persons from the electoral rolls and not to allow them to cast vote in the forthcoming elections of the Gram Panchayats.

We have heard Shri T.Rajendra Prasad, learned Advocate for the petitioners and perused the record.

In regard to first prayer made in the petition, it is apposite to

mention that even though the petitioners have prayed for issue of mandamus to respondent No.1 to conduct enquiry into the alleged irregularities committed in the preparation of electoral rolls of the Assembly Constituencies and Panchayats in the entire State, they have not fulfilled the condition precedent which is required to be satisfied for issue of a writ of mandamus namely, the demand for justice. It is well settled that before a person can invoke jurisdiction of the High Court under Article 226 of the Constitution of India for issue of a writ of mandamus or an order or direction in the nature of mandamus, he must either serve a notice of demand for justice or make a representation to the authority concerned imploring it to take action in accordance with law and such demand or representation is rejected/declined or is deemed to have been rejected or declined. This proposition is based on the decision of the Supreme Court in **Kamini Kumar Das Chowdhury v. State of West Bengal**^[1] and **Amritlal Berry v. Collector of Central Excise and Central Revenue**^[2].

In the present case, the petitioners have neither pleaded nor any material has been placed on record of the writ petition to show that they had made any representation to respondent No.1 highlighting the so-called irregularities committed in the preparation of electoral rolls of the Assembly Constituencies and Panchayats of the entire State of Andhra Pradesh and called upon him to order an enquiry and take action for punishing the guilt persons by invoking the provisions of Section 32 of the 1950 Act. Therefore, there is no escape from the conclusion that the petitioners have failed to fulfill the condition precedent for issue of a writ of mandamus.

We are further of the view that the allegations contained in the writ petition are too vague to warrant an enquiry by the Court into the alleged irregularities committed in the preparation of electoral rolls of

the Assembly Constituencies and Panchayats in the State of Andhra Pradesh. It is not the pleaded case of the petitioners that they have gone through the electoral rolls of various Assembly Constituencies and Panchayats and have discovered large-scale irregularities. Rather, their assertions are confined to the electoral rolls of Thimmasamudram Village. Therefore, on the basis of bald allegations contained in the writ petition that there have been large scale of irregularities in the preparation of electoral rolls, it is not possible to order a roving enquiry to fish out some material, which may remotely support the cause set up by the petitioners.

Even in respect of Thimmasamudram Village, the petitioners have failed to make out a case for ordering an enquiry by the Court. Annexure P1 is a copy of the representation dated 25-5-2006, which is said to have been made by one Sri T.Madusudhan Rao to the State Election Commissioner. A perusal thereof shows that the representationist has made some allegations of irregularities in the preparation of voters list of Kesavaram, Chamadala (Kaligiri Mandalam) and Krakutoor, Pedakondooru, Gangireddypalem (Kavali Mandalam) and Chenchuganipalem. Annexure P2 is a copy of the petition made by petitioner No.1 and one T.Suneel alleging therein that they had raised objection in respect of 107 votes which resulted in changing the category of the Village. They complained that despite representation, double entries have not been removed and some more names have been added. Annexure P3 is a copy of the petition filed by T.Suneel alleging therein that the names of a number of non-residents and ineligible persons have been included in the voters list. Both Annexure P2 and P3 do not bear any date. The petitioners also have not shown as to whether their representations have been delivered to the State Election Commissioner. Therefore, it is not possible to entertain the prayer made by the petitioners for ordering an enquiry

into the alleged irregularities committed in preparation of electoral rolls.

There is yet another reason for our disinclination to entertain the first prayer made by the petitioners. They have neither named any of the officers, who are said to have committed irregularities in preparation of electoral rolls of Assembly Constituencies and Panchayats, nor any such officer has been impleaded as party to the writ petition. The officers who are sought to be prosecuted by imploring upon respondent No.1 to invoke Section 32 of the 1950 Act have also not been impleaded as party to the writ petition and without hearing such persons it is not possible to entertain the prayer made by the petitioners.

The second and third prayer made by the petitioners for inclusion of the names of some persons in the electoral rolls and for issue of a direction to the respondents to delete the names of some other persons, who are said to be ineligible to take part in the election cannot be accepted, because the names of the persons who are sought to be included in the voters list have not been disclosed. Likewise, the persons whose names are sought to be excluded from the voters list have not been impleaded as party to the writ petition and without issuing notice and hearing such persons, this court cannot direct the respondents to exclude their names from the voters list and deprive them of their right to exercise franchise in the forthcoming elections.

In regard to the petitioners claim in the matter of wrongful exclusion of names of some persons in the voters list, it is sufficient to mention that in furtherance of notification dated 01.05.2006 issued by State Election Commission in exercise of its power under Article 243-K read with Section 11 of Andhra Pradesh Gram Panchayat Act, 1994, District Panchayat Officer concerned had prepared electoral rolls. Those persons, whose names were wrongfully excluded from the

electoral rolls of Gram Panchayat were entitled to make representation to Electoral Registration Officer in terms of proviso to Section 11 of 1994 Act read with Rule 6 of 2002 Rules. The petitioners have not produced any material before the Court to show that such persons had made applications or filed objections before Electoral Registration Officer with the prayer for inclusion of their names in the voters list. Therefore, we do not find any valid ground or justification to entertain their prayer.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 24.07.2006

Kvni/GRR

[\[1\]](#) AIR 1972 SC 2060

[\[2\]](#) AIR 1975 SC 538